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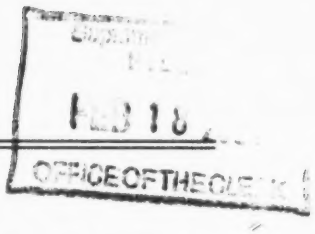

In The

Supreme Court of the United States

ROBERT D. HOLLOWAY,

Petitioner,

v.

ARKANSAS STATE BOARD
OF ARCHITECTS, ET AL.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Petitioner's request for prospective declaratory and injunctive relief from the federal district court is barred by the *Rooker-Feldman* doctrine where the grant of such relief would require the district court to make conclusions directly contrary to the state supreme court decision against Petitioner.[1]

[1] Petitioner frames the question "Whether the Eighth Circuit erred in affirming the district court's order dismissing Petitioner's entire amended complaint pursuant to the 'Rooker-Feldman Doctrine' where Petitioner's amended complaint contains a separate count seeking prospective declaratory and injunctive relief? In so holding, the Eighth Circuit's decision directly conflicts with decisions of the Third and Seventh Circuits."

LIST OF PARTIES

Arkansas State Board of Architects, John D. Harris, Blake Dunn, Steve Miller, Beth Leake, Larry Black, Cora Bradshaw, Eugene Levy, Larry McGowen, Jeff Shannon, Larry Jegley and Mike Beebe

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STATEMENT OF THE CASE

The Arkansas State Board of Architects ("Board") received a complaint against Petitioner Robert D. Holloway ("Holloway") on September 21, 1999, charging that Holloway, as a non-architect, performed architectural services for a building project in North Little Rock. Holloway is a licensed engineer. The Board notified Holloway of the allegations against him and of the Board's initiation of an investigation of the allegations. Holloway responded that he believed his work on the building project was within the authorized activity of an engineer.

On March 1, 2000, the Board served an order and notice of hearing on Holloway, alleging that Holloway had practiced architecture without a license in violation of Ark. Code Ann. § 17-15-301. The Board conducted a hearing on May 11, 2000 during which Holloway's attorney appeared and argued, among other things, that provisions of the Arkansas Architectural Act ("AAA") that define the practice of architecture are unconstitutionally vague and, as applied, violate Holloway's right to due process. After the hearing, the Board determined that Holloway violated Ark. Code Ann. § 17-15-301, by engaging in the practice of architecture without a license, and imposed a $5,000 penalty.

Holloway appealed to the circuit court, reasserting the same arguments he made before the Board. *See Holloway v. Arkansas State Board of Archt.*, 352 Ark. 427, 432, 101 S.W.3d 805, 808 (2003). The circuit court affirmed the Board's decision in all respects. Holloway appealed to the Arkansas Court of Appeals, which considered the same arguments that were presented to the Board and the circuit court. The court of appeals held that Holloway did

not preserve his constitutional challenges and remanded the case to the Board for further fact finding and for consideration of the constitutional issue. The Arkansas Supreme Court subsequently granted the Board's petition for review.

The Arkansas Supreme Court considered the same arguments Holloway presented to the Board, the circuit court, and the court of appeals, including Holloway's constitutional challenge to the statutes defining the practice of architecture. *Holloway*, 352 Ark. at 434-437, 101 S.W.3d at 809-812. The court concluded that these statutes (Ark. Code Ann. §§ 17-15-102, 17-30-101, and 17-30-104) were not unconstitutionally vague and did not, as applied to Holloway, violate due process guarantees. *Id.*

Holloway initiated the present action in federal district court on May 22, 2003 against the Board, its members, and its executive director in their individual and official capacities; Larry Jegley, in his official capacity as the Pulaski County Prosecuting Attorney; and Mike Beebe, in his official capacity as the Arkansas Attorney General. Holloway brought his suit pursuant to 42 U.S.C. § 1983 alleging that provisions of the AAA defining the practice of architecture are void for vagueness in violation of the United States Constitution and that the Board's attempts to enforce the provisions against him violate his right to due process. Holloway requested declaratory relief, compensatory and punitive damages, and an injunction enjoining the Board, and Respondents Jegley and Beebe from enforcing the AAA provisions that define the practice of architecture.

Holloway asserts that his claims for prospective declaratory and injunctive relief are not barred by the *Rooker-Feldman* doctrine because such relief would not

interfere with the previous state court decision against him. The Eighth Circuit Court of Appeals rejected Holloway's argument and affirmed the district court in an unpublished opinion,[2] finding that "Holloway's claims for declaratory and injunctive relief were also barred, because any grant of relief would require the district court to make conclusions directly contrary to the decision of the state supreme court." Pet. at 4a. Holloway filed a petition for rehearing and for rehearing en banc in the Eighth Circuit, which denied review on September 3, 2004. This Petition for Writ of Certiorari was timely filed on November 24, 2004.

SUMMARY OF THE ARGUMENT

The gravaman of Holloway's Petition for Writ of Certiorari is that the *Rooker-Feldman* doctrine does not bar the count of his complaint seeking prospective declaratory and injunctive relief solely because the relief is prospective. Holloway also argues that there is a split in the circuits on whether claims for prospective relief in federal court require review of a previous state court decision, and thus are barred by the *Rooker-Feldman* doctrine.

Respondents maintain that review by this Court is not necessary because this legal principle is well settled and treated consistently. The decision of the Eighth Circuit Court of Appeals is correct and consistent with the decisions of this Court including the decisions in *Rooker v.*

[2] The decision is attached to the Petition for Writ of Certiorari as Appendix A.

Fidelity Trust Co., 263 U.S. 413 (1923) and *Dist. of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983), as well as the decisions in *Centifanti v. Nix*, 865 F.2d 1422 (3rd Cir. 1989) and *Van Harken v. City of Chicago*, 103 F.3d 1346 (7th Cir. 1997). The Court of Appeals correctly held, like other jurisdictions around the country including the Third and Seventh Circuits, that a request for prospective relief in federal court is barred by the *Rooker-Feldman* doctrine when the grant of such relief would require the district court to make conclusions directly contrary to a state court judgment.

Petitioner erroneously asserts that there is a conflict among the circuits on this issue. While results differ based on the facts and claims presented in each individual case, the analysis by the Third and Seventh Circuits is consistent with the Eighth Circuit's analysis. Thus, contrary to Petitioner's contention, no conflict exists.

Review should also be denied because in addition to the fact there is no conflict, the question presented by the Petition does not raise an important constitutional issue and because the Eighth Circuit's decision is correct. For these reasons, the Petition for Writ of certiorari should be denied.

REASONS FOR DENYING REVIEW

THE EIGHTH CIRCUIT'S DECISION WAS CORRECT AND DOES NOT CONFLICT WITH DECISIONS IN THE THIRD AND SEVENTH CIRCUITS

Petitioner claims that *Centifanti v. Nix*, *supra* and *Van Harken v. City of Chicago*, *supra*, conflict with the

Eighth Circuit's holding in the present case. Instead of presenting conflicts in application of the *Rooker-Feldman* doctrine, the cases are entirely consistent with the reasoning of the Court of Appeals in this case. Results differ, as will be seen, only when the prospective declaratory and injunctive relief sought is not "inextricably intertwined" with the state court decision and thus, would not interfere with the state court decision.

The Eighth Circuit Court of Appeals correctly applied the reasoning of *Rooker v. Fidelity Trust Co.*, *supra*, and *Dist. of Columbia Ct. of Appeals v. Feldman*, *supra*, in this case. After *de novo* review, the Court of Appeals agreed that the district court lacked jurisdiction "because Holloway's federal complaint raised constitutional challenges already decided by the Arkansas Supreme Court, albeit in a non-section 1983 action." Pet. at 4a, citing *Bechtold v. City of Rosemount*, 104 F.3d 1062, 1065 (8th Cir. 1997) (litigant cannot circumvent *Rooker-Feldman* by recasting lawsuit as § 1983 action). With regard to Holloway's claims for prospective declaratory and injunctive relief, the Court of Appeals found that they too were barred "because any grant of relief would require the district court to make conclusions directly contrary to the decision of the state supreme court." Pet. at 4a, citing *Lemonds v. St. Louis County*, 222 F.3d 488, 492 (8th Cir. 2000) (*Rooker-Feldman* bars indirect attempts to undermine state-court judgments); *Keene Corp. v. Cass*, 908 F.2d 293, 297 (8th Cir. 1990) (*Rooker-Feldman* doctrine applies to claims for declaratory and injunctive relief).

Federal district courts are prohibited from "exercising jurisdiction over general constitutional claims that are 'inextricably intertwined' with specific claims already adjudicated in state court." *Lemonds*, 222 F.3d at 492-93,

citing *Feldman*, 460 U.S. at 482, n.16. A general federal claim is "inextricably intertwined" with a state court judgment "if the federal claim succeeds only to the extent that the state court wrongly decided the issue before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment." *Id.* at 493, quoting *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring). If the federal court can only provide relief by determining that the state court was wrong, it is, in effect, an appeal of the state court judgment that is prohibited by the *Rooker-Feldman* doctrine. *Lemonds*, 222 F.3d at 492. Put another way, a claim is barred by the *Rooker-Feldman* doctrine "if the requested federal relief would void the state court's judgment or amount to basically a reversal of the state court's holding." *Ace Constr. v. City of St. Louis*, 263 F.3d 831, 833 (8th Cir. 2001) (citation omitted).

Holloway attempts to circumvent the *Rooker-Feldman* doctrine by claiming that "[h]e does not seek expressly or impliedly to review or overturn any previous state court decision nor does he seek to stop the enforcement of any previous state court decision against him in Count V." Pet. at 10. The fatal flaw in this argument is that Count V of Holloway's federal suit is also an attempt to obtain a different outcome than the outcome he obtained in state court. Count V requests a "declaration from [the district court] that the Arkansas statutes which define the practice of architecture are void for vagueness and violate the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution." Pet. at 9 and 43a. Holloway further requests in Count V that the Court

permanently enjoin the Board and Respondents Jegley and Beebe from enforcing these statutes "now and in the future." Pet. at 43a-44a. The Arkansas Supreme Court determined that the Arkansas statutes which define the practice of architecture are not void for vagueness and, thus, do not violate due process guarantees. *Holloway*, 352 Ark. at 434-437, 101 S.W.3d at 809-812. Since Holloway's request for prospective relief is premised upon a finding that the subject statutes are unconstitutional, Count V is in reality an attempt to obtain reversal of the state court judgment finding the subject statutes to be constitutional. In other words, Holloway's request for prospective relief "succeeds only to the extent that the state court wrongly decided the issues before it." *Lemonds*, 222 F.3d at 493. Therefore, the Eighth Circuit Court of Appeals properly concluded that Count V was barred by the *Rooker-Feldman* doctrine.

The Eighth Circuit's decision does not conflict with a case in another appellate court and is not even in tension with the cases relied upon by Holloway. For instance, in *Centifanti v. Nix*, *supra*, a suspended attorney who had been denied reinstatement to the bar, brought a civil rights action against the Justices of the Pennsylvania Supreme Court alleging various constitutional defects in the procedural rules under which the Supreme Court considers petitions for reinstatement of suspended attorneys. Centifanti had been suspended from the practice of law for five years, after pleading nolo contendere to two charges of aggravated assault on his wife. Upon completion of his criminal probation, Centifanti filed a petition for reinstatement with the Disciplinary Board of the Supreme Court of Pennsylvania. After a hearing, a hearing committee of the Disciplinary Board recommended to

the Board that Centifanti's petition for reinstatement be granted. Upon review, the Disciplinary Board recommended Centifanti's reinstatement. Centifanti then filed an application for leave to file a brief in support of his petition for reinstatement with the Supreme Court of Pennsylvania. By letter, the Court denied the petition for reinstatement to the Bar as well as the application for leave to file a brief. There was no opinion or statement of reasons by the court.

The district court viewed Centifanti's complaint as an attempt to obtain improper review of the decision of the Pennsylvania Supreme Court, rather than a permissible generalized constitutional challenge to a state law and dismissed his complaint. The Third Circuit reversed, finding that Centifanti did not request the district court to interfere with the decision of the Pennsylvania Supreme Court to deny his petition for reinstatement, or with the enforcement of that decision. Instead, "he requested an injunction ordering the state court to correct alleged constitutional defects in the procedural rules applied in reaching that decision . . . [which,] if granted, could affect *future* decisions of the state supreme court, [but] would not require review of a past decision." *Id.* at 1430.

A key distinction between the *Centifanti* case and the present case is the fact that Centifanti did not challenge the constitutionality of the procedural rules before the Pennsylvania Supreme Court. Thus, there was no state court decision passing on the validity of the rules. In contrast, Holloway raised constitutional challenges to the statutes at issue before the Board, the circuit court, the court of appeals and the Arkansas Supreme Court. *Holloway*, *supra* (affirming the constitutionality of Ark. Code

Ann. §§ 17-15-102, 17-30-101, and 17-30-104). In this regard, the district court observed:

> The constitutional claims raised by Holloway in this case are identical to those he pursued in state court – that the provisions of the [Arkansas Architectural Act] defining the practice of architecture are void for vagueness, and the Board's attempt to enforce the provisions against Holloway violate his right to due process. The Supreme Court of Arkansas considered and rejected these claims. *See Holloway*, 101 S.W.3d at 812 (concluding after a detailed review that "the statutes Holloway challenges are not void for vagueness").

Pet. at 11a.

Holloway's requested relief in Count V for a declaration "that the Arkansas statutes which define the practice of architecture are void for vagueness and violate the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution" (Pet. at 9 and 43a) would require review of the state supreme court decision finding these statutes to be constitutional. This is so even though the requested request is prospective. Similarly, although Holloway's request for a permanent injunctive enjoining the Board, the prosecuting attorney and the attorney general from enforcing the subject statutes is prospective in nature, such relief "is predicated upon a conviction that the state court was wrong." *Pennzoil Co.*, 481 U.S. at 25. The Eighth Circuit Court of Appeals correctly concluded that "Holloway's claims for declaratory and injunctive relief were . . . barred, because any grant of relief would require the district court to make conclusions

directly contrary to the decision of the state supreme court." Pet. at 4a (internal citations omitted).

Holloway's assertion that "[t]he Third Circuit has specifically recognized that requests for prospective relief do not require relief of a previous state court decision, and therefore, do not violate the 'Rooker-Feldman doctrine'" is simply wrong. Pet. at 10. *Centifanti* does not stand for the proposition that *all* claims for prospective relief do not require relief of a previous state court decision and therefore, are not barred by the *Rooker-Feldman* doctrine. Merely because one count of a complaint seeks prospective declaratory and injunctive relief does not end the inquiry into whether a district court has subject matter jurisdiction. The prospective relief requested by Centifanti was not barred by the *Rooker-Feldman* doctrine because such relief did not interfere with the decision of the Pennsylvania Supreme Court in that particular case.

Likewise, *Van Harken v. City of Chicago, supra,* does not conflict with the Eighth Circuit's decision. In *Van Harken,* the plaintiffs brought a class action against the City of Chicago challenging the city's new system for adjudicating parking violations. The suit was brought on behalf of persons who either had been adjudged liable for a parking violation in contested proceedings and paid their fines or persons who had received a parking ticket but whose cases had not been adjudicated. The plaintiffs alleged that the new procedures violated the due process clauses of the United States and Illinois constitutions. The City asserted that the suit was barred by the *Rooker-Feldman* doctrine. The Seventh Circuit found that the *Rooker-Feldman* doctrine failed for two reasons. First, it ruled that the doctrine does not apply to administrative judgments. *Van Harken, supra,* at 1349. Second, the court

determined that "[i]nsofar as the plaintiffs merely seek a declaration that the procedures under which the parking charges against them were, or in the case of those members of the class whose cases have not yet been heard will be, adjudicated are constitutionally inadequate, they are not barred by Rooker-Feldman because they are not challenging the judgment in any parking case." *Id.* The court held that insofar as the plaintiffs sought refunds of the parking fines imposed upon them, such relief was barred.

The *Rooker-Feldman* doctrine did not bar the district court's exercise of jurisdiction over Van Harkin's request for declaratory relief because the requested relief did not interfere with any existing state court judgment, and the court did not need to entertain any issue which was actually litigated in state court or any claim that was inextricably intertwined with such an issue. In other words, no state court decision was disturbed. The prospective relief requested in the present case requires a finding that the state court decision was wrong. Were the district court to rule that the licensing statutes defining the practice of architecture are unconstitutionally vague and violate due process guarantees, as Holloway asks, the Arkansas Supreme Court decision in *Holloway, supra*, would effectively be reversed or voided.

Thus, neither case cited by Holloway conflicts with the Eighth Circuit's decision in the present case, nor does either case detract from the guiding principle for determining whether the *Rooker-Feldman* doctrine is applicable: where, as in the instant case, the relief requested requires a determination that the state court decision is wrong, the issues are inextricably intertwined and the district court has no subject matter jurisdiction.

CONCLUSION

The decision of the Court of Appeals in this case is consistent with the decisions of this Court as well as the decisions of the Third and Seventh Circuits. The conflict asserted by Holloway is without merit as a basis for review by this Court. Respondents respectfully request that the petition for writ of certiorari be denied.

Respectfully submitted,

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